

OCT 26 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN HENRY SLAUGHTER,

Defendant - Appellant.

No. 08-30458

D.C. No. 2:05-cr-00192-TSZ

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Submitted October 25, 2011**

Before: TROTT, GOULD, and RAWLINSON, Circuit Judges.

John Henry Slaughter appeals from the district court's order denying his motion to reduce his sentence under 18 U.S.C. § 3582(c)(2). We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand for the district court to provide a statement of reasons for its decision.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Slaughter contends that the district court erred by failing to explain adequately the reasons for its denial of his § 3582(c)(2) motion. He also claims that the court's failure to consider his post-sentencing rehabilitation, and to impose a reduction in his sentence proportional to the reduction reflected in the amended Guideline, resulted in a substantively unreasonable sentence.

The district court had discretion to grant Slaughter's request for a sentence modification below the amended Guideline range. *See* U.S.S.G.

§ 1B1.10(b)(2)(B); *United States v. Sipai*, 623 F.3d 908, 910 (9th Cir. 2010).

Because we cannot determine from the district court's order whether it denied Slaughter's motion on the belief that relief was not warranted, or on the erroneous belief that it lacked discretion to reduce his sentence, we vacate and remand for the district court to provide a statement of reasons for its decision. *See Dillon v. United States*, 130 S. Ct. 2683, 2691-92 (2010) (if a prisoner is eligible for a sentence reduction, the court must consider any applicable § 3553(a) factors to determine whether a reduction is warranted in whole or in part under the particular circumstances of the case).

Slaughter's motion to expedite review of this case is denied as moot.

VACATED and REMANDED.